

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. _____

IN RE:

SARAH ZITO; ALVARO SARMIENTO,
JR.; MARK SHINN; and DANIEL
BERMUDEZ,

Complainants,

COMPLAINT

v.

STRATA AUDUBON, LLC and STRATA
VERIDIAN, LLC,

Defendants.

Complainants Sarah Zito, Alvaro Sarmiento, Jr., Mark Shinn, and Daniel Bermudez (“Complainants”), by and through their undersigned counsel, complain of Defendants Strata Audubon, LLC (“Strata Audubon”) and Strata Veridian, LLC (“Strata Veridian”), (collectively, “Defendants”), as follows:

PARTIES

1. The address of Strata Audubon’s registered agent is CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.
2. The address of Strata Veridian’s registered agent is CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.
3. Complainants Zito and Sarmiento lease or leased an apartment in and reside or

resided at the “Audubon Park Apartments” located at 1700 Eagle Landing Boulevard in Hanahan in Berkeley County, South Carolina.

4. Strata Audubon owns and leases apartments in the “Audubon Park Apartments” located at 1700 Eagle Landing Boulevard in Hanahan in Berkeley County, South Carolina (the “Audubon Property”).

5. Complainant Shinn leases or leased an apartment in and resides or resided at the “Grove Apartments” located at 315 Birchrun Drive in Spartanburg in Spartanburg County, South Carolina.

6. Complainant Bermudez leases or leased an apartment in and resides or resided at the “Grove Apartments” located at 315 Birchrun Drive in Spartanburg County, South Carolina.

7. Strata Veridian owns and leases apartments in the “Grove Apartments” located 315 Birchrun Drive in Spartanburg in Spartanburg County, South Carolina (the “Veridian Property”).

8. The claims in this action arise from and relate to Defendants’ ownership, leasing, and operation of the Audubon Property and the Veridian Property, including providing tenants with water and sewerage utility services in exchange for compensation at rates other than the rates at which Defendants obtained water and sewerage from others.

FACTUAL BACKGROUND

9. The Audubon Property consists of 13 apartment buildings and more than 250 apartment units.

10. Strata Audubon obtained ownership of the Audubon Property by way of deed dated September 28, 2016, recorded with the Berkeley County Register of Deeds at book 2289 and page 524.

11. Complainants Zito and Sarmiento leased and resided in an apartment unit at the Audubon Property.

12. Strata Audubon entered into leases with Zito and Sarmiento for the apartment unit at 1809 Audubon Drive in Hanahan (the “Audubon Lease”). See Exhibit A attached hereto.

13. Strata Audubon entered into the same Audubon Lease with the other current and former tenants at the Audubon Property.

14. The Audubon Lease includes a “Utility and Services Addendum.”

15. The Utility and Services Addendum to the Audubon Lease provides that water and sewerage utilities were and are billed to Zito, Sarmiento, and the other tenants according to an allocation formula rate, also known as a ratio utility billing system.

16. Defendants do not maintain any meter between the point of delivery/outflow of water and sewerage from the utility from which Defendants obtain such services and Defendants’ tenants. There are no meters on Defendants’ properties determining the actual water and sewerage usage of Defendants’ tenants.

17. In the Audubon Lease, the allocation formula rate specified in the Utility and Services Addendum for billing water and sewerage utilities is and was an allocation to the tenants in a particular apartment unit of a portion of the total water and sewerage usage of the entire Audubon Property according to the number of persons residing in that apartment unit as a percentage of the total tenants at the Audubon Property.

18. As set out in the Utility and Services Addendum to the Audubon Lease for each tenant, tenants at the Audubon Property represented that all persons residing in a particular apartment unit were accurately identified in the lease for that unit and that the tenants would

promptly notify Strata Audubon of any change in the number of persons residing in a unit.

19. Zito, Sarmiento, and their minor son were the only persons who resided in their apartment unit during the time in which Zito and Sarmiento leased an apartment unit at the Audubon Property.

20. Zito, Sarmiento, and their minor son were listed on the lease throughout the time in which Zito and Sarmiento leased an apartment unit at the Audubon Property.

21. Other tenants at the Audubon Property have or had additional persons residing in their apartment units who are not listed on their respective leases.

22. Zito informed Strata Audubon's agents on multiple occasions that additional persons were residing in apartments units at the Audubon Property.

23. In response, Strata Audubon's agents stated that they would determine whether any additional persons not listed on a lease were residing in an apartment unit and would issue lease violation notices for any additional persons.

24. Strata Audubon's agents took no action in response to Zito's information and requests.

25. Defendants have taken no action to verify how many persons are residing in each apartment unit at the Audubon Property, whether before or after Zito informed Strata Audubon's agents of additional persons residing in apartment units.

26. The Veridian Property consists of 13 buildings and more than 175 apartment units.

27. Strata Veridian obtained ownership of the Veridian Property by way of deed dated January 30, 2018, recorded with the Spartanburg County Register of Deeds at book 118M and page 347.

28. Complainant Shinn leased and resided in an apartment unit at the Veridian Property.
29. Complainant Bermudez leased and resided in an apartment unit at the Veridian Property.
30. Strata Veridian entered into leases with Shinn and Bermudez for apartment units at the Veridian Property (the "Veridian Lease"). See Exhibit B attached hereto.
31. Strata Veridian entered into the same Veridian Lease with the other current and former tenants at the Veridian Property.
32. The Veridian Lease includes a "Utility and Services Addendum."
33. The Utility and Services Addendum to the Veridian Lease provides that water and sewerage utilities were and are billed to Shinn, Bermudez, and the other tenants according to an allocation formula rate, also known as a ratio utility billing system.
34. In the Veridian Lease, the allocation formula rate specified in the Utility and Services Addendum for billing water and sewerage utilities is and was an allocation to the tenants in a particular apartment unit of a portion of the total water and sewerage usage of the entire Veridian Property according to a combination of the square footage of the apartment unit and the number of persons residing in that apartment unit as a percentage of the total for the Veridian Property.
35. As set out in the Utility and Services Addendum to the Veridian Lease for each tenant, tenants at the Veridian Property represented that all persons residing in a particular apartment unit were accurately identified in the lease for that unit and that the tenants would promptly notify Strata Veridian of any change in the number of persons residing in a unit.
36. Shinn, Bermudez, and persons listed on their respective leases were the only

persons who resided in their respective apartment units during the time in which Shinn and Bermudez leased apartment units at the Veridian Property.

37. Defendants have taken no action to verify how many persons are residing in each apartment unit at the Veridian Property during the time in which Shinn and Bermudez resided at the Veridian Property.

38. Pursuant to Section 58-5-240 of the South Carolina Code and Sections 103-503 and 103-703 of the South Carolina Code of Regulations, public utilities are not permitted to charge rates or fees for water or sewerage not approved by the Public Service Commission of South Carolina (the "Commission").

39. Any rate for water or sewerage charged by a public utility that was not approved by the Commission is an unlawful rate.

40. Defendants have not filed any rate for water or sewerage with the Commission.

41. The Commission has not approved the allocation rate used by Defendants to bill for water and sewerage.

42. Defendants charge new account fees, monthly administrative billing fees, and final bill fees not approved by the Commission.

43. Defendants included in the water and sewer allocation rate and charged Complainants and the other tenants for water and sewer usage in common areas of the Property (*i.e.*, usage not within any particular apartment unit) despite such charges not being approved by the Commission.

FOR A FIRST CLAIM

Finding and Declaration that Defendants are Public Utilities Subject to the Jurisdiction and Regulation of the Commission

44. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

45. Title 58 of the South Carolina Code provides that any entity that furnishes or supplies water or sewerage to the public or a portion of the public is a public utility subject to the jurisdiction and regulation of the Commission.

46. In multiple orders, including Order No. 2003-214 (Docket No. 2001-485-WS) and Order No. 2008-725 (Docket No. 2008-192-WS), the Commission declared that any entity that sells water or provides sewerage for compensation is a public utility including entities that do so through submetering or the allocation version of submetering.

47. The Commission has the power and jurisdiction to supervise and regulate the rates and service of every public utility in South Carolina.

48. Defendants do not charge tenants the actual water and sewerage charges that Defendants pay to a utility for water and sewerage for the properties.

49. Defendants do not merely measure the amount of flow of water and wastewater and provide billing functions.

50. Defendants do not measure the usage of water and sewerage by tenants.

51. Defendants charge tenants for water and sewerage usage using rates different from those Defendants pay to utilities providing water and sewerage to Defendants.

52. Defendants charge administrative fees for water and sewerage in addition to the allocation formula rates that Defendants charge for water and sewerage.

53. Defendants do not merely pass through the costs of water and sewerage to their tenants.

54. Defendants furnish and supply water and sewerage to tenants for compensation.

55. Because Defendants furnish and supply water and sewerage to a portion of the public for compensation, Defendants are public utilities subject to the jurisdiction and regulation of the Commission.

56. Complainants request a finding and declaration that Defendants furnish and supply water and sewerage to a portion of the public for compensation, are public utilities subject to the jurisdiction and regulation of the Commission, and are required to have any rates charged for water and sewerage approved by the Commission prior to charging such rates.

FOR A SECOND CLAIM

Finding and Declaration that Rates Charged by Defendants for Water and Sewerage are Unlawful Because Not Approved by the Commission

57. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

58. Pursuant to Section 58-5-240 of the South Carolina Code and Sections 103-503 and 103-703 of the South Carolina Code of Regulations, Defendants are not permitted to charge any rate for water or sewerage unless the rate was first approved by the Commission.

59. Defendants have neither requested nor received Commission approval of the rates Defendants charge for water and sewerage.

60. Complainants request a finding and declaration that the rates charged by Defendants for water and sewerage are unlawful because not approved by the Commission.

FOR A THIRD CLAIM

Finding and Declaration that Rates Charged by Defendants are Unjust, Unreasonable, and in Violation of Law

61. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

62. Pursuant to Section 58-5-290 of the South Carolina Code, the Commission has the power to find that rates charged by a public utility for water and sewerage are unjust, unreasonable, or in violation of law.

63. The rates charged by Defendants for water and sewerage do not reflect actual usage of water or sewerage.

64. The rates charged by Defendants for water and sewerage are based on an allocation formula using either the number of persons residing in an apartment or a combination of the square footage of an apartment and the number of persons residing in an apartment.

65. The allocation formulas used by Defendants are unjust and unreasonable because the allocation formulas do not accurately calculate, nor even approximate, the actual water and sewerage usage of Defendants' tenants.

66. Under either of Defendants' allocation formulas, a tenant who travels regularly for their occupation, such as a flight attendant or a military servicemember, would be billed the same amount for water and sewerage as a tenant who is present in the apartment using water and sewerage every day, assuming the same number of persons residing in each unit and the same square footage, per the respective allocation formulas.

67. Under either of Defendants' allocation formulas, a tenant who leaves the apartment for a two-week vacation would be billed the same amount for water and sewerage that month as a

tenant who was present in the apartment using water and sewerage every day, assuming the same number of persons residing in each unit and the same square footage, per the respective allocation formulas.

68. Under either of Defendants' allocation formulas, a tenant who has four guests stay with the tenant for a month would be billed the same amount for water and sewerage that month as a tenant who had no guests, assuming the same number of persons residing in each unit and the same square footage, per the respective allocation formulas.

69. Under either of Defendants' allocation formulas, a tenant who undertakes significant efforts to conserve water would be billed the same amount for water and sewerage as a tenant who fails to address leaky plumbing fixtures, takes two showers every day, runs the washing machine and dishwasher daily despite not being full, and engages in other wasteful uses of water and sewerage.

70. The allocation formulas used by Defendants are unjust and unreasonable because water is a limited resource to be conserved and used efficiently under South Carolina law and public policy, *see* S.C. Code Ann. § 48-9-20; S.C. Code Ann. §§ 49-3-40, *et seq.*; S.C. Code Ann. § 49-5-20; S.C. Code Ann. Regs. 103-772, and the allocation formulas used by Defendants cause the wasteful overuse of limited water resources.

71. The allocation formula rates charged by Defendants for water and sewerage are unjust and unreasonable because Defendants included in the water and sewerage allocation rate and charged Complainants and the other tenants for water and sewerage usage in common areas of the Property (*i.e.*, usage not within any particular apartment unit).

72. The allocation formula rates charged by Defendants for water and sewerage are

unjust and unreasonable because tenants cannot verify or determine the accuracy of Defendants' inputs into the allocation formula calculations each month—the total usage at the apartment complex, the total number of tenants, and the amount the landlord paid the area-wide utility for the total usage.

73. The allocation formula rates, including the administrative fees added to the rate determined by the allocation formula, charged by Defendants are in violation of South Carolina law because the rates were not approved by the Commission as required by Section 58-5-240 of the South Carolina Code and Sections 103-503 and 103-703 of the South Carolina Code of Regulations.

74. The allocation formula rates charged by Defendants are in violation of South Carolina law because Defendants' systems have no meters measuring service as required by Regulation 103-720 of the South Carolina Code of Regulations.

75. Complainants request a finding and declaration that the allocation formula rates charged by Defendants for water and sewerage are unjust, unreasonable, and in violation of law.

FOR A FOURTH CLAIM

Refund of Water and Sewerage Charges Collected by Defendants

76. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

77. The Commission has broad authority to correct any misconduct by a public utility, including as set forth in and as shown by Section 58-5-270 of the South Carolina Code and Sections 103-533 and 103-733 of the South Carolina Code of Regulations.

78. The allocation formula rates charged by Defendants are unlawful because not

approved by the Commission.

79. The allocation formula rates are unjust, unreasonable, and unlawful because the rates do not accurately calculate, nor even approximate, the actual water and sewerage usage of Defendants' tenants.

80. Because the rates charged by Defendants are unlawful, unjust, and unreasonable, the charges collected by Defendants for water and sewerage must be refunded to the tenants who paid those charges.

81. Complainants seek the refund to all of Defendants' current and former tenants at the Audubon Property and the Veridian Property of all water and sewerage charges and new account fees, monthly administrative billing fees, and final bill fees collected by Defendants.

FOR A FIFTH CLAIM
Breach of Contract

82. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

83. Defendants entered into the Audubon Lease and Veridian Lease with Complainants and the other tenants at the Audubon Property and Veridian Property.

84. The Audubon Lease provides that water and sewerage are to be billed based on allocation by the number of persons residing in an apartment unit as a percentage of the total persons residing in apartments at the Audubon Property.

85. The Veridian Lease provides that water and sewerage are to be billed based on allocation by the square footage of an apartment unit and the number of persons residing in an apartment unit as a percentage of the total at the Veridian Property.

86. The leases provide that “no billing method, charge, or fee mentioned herein will be used in any jurisdiction where such use would be unlawful.”

87. The leases provide that Defendants will calculate the allocation of water and sewerage costs “in accordance with state and local statutes.”

88. Public utilities are not permitted to charge rates for water or sewerage not approved by the Commission.

89. Any rate for water or sewerage charged by a public utility that was not approved by the Commission is an unlawful rate.

90. Defendants have not filed any rate for water or sewerage with the Commission.

91. The Commission has not approved the allocation rate used by Defendants to bill for water and sewerage.

92. Defendants charge new account fees, monthly administrative billing fees, and final bill fees not approved by the Commission.

93. Defendants included in the water and sewerage allocation rate and charged Complainants and the other tenants for water and sewerage usage in common areas of the Property (*i.e.*, usage not within any particular apartment unit) despite such charges not being approved by the Commission.

94. The allocation rate charged by Defendants is an unlawful rate.

95. The allocation rate charged by Defendants was not charged in accordance with state statutes.

96. Even were the allocation rate a lawful rate, Defendants failed to allocate the water and sewerage based on the number of persons residing in each apartment unit at the respective

property as required by the respective lease terms.

97. Defendants had knowledge that the allocated water and sewerage did not accurately allocate the usages because additional persons not listed on leases resided in apartment units at the properties

98. Despite knowledge of the inaccuracy of the allocated water and sewerage, Defendants continued to bill water and sewerage using an inaccurate allocation rate.

99. Defendants took no action to ensure the accuracy of the allocation rate charged.

100. Defendants took no action to correct the inaccuracy of the allocation rate charged.

101. Complainants were damaged by the breaches of the leases in the amount of the unlawful allocation rate water and sewerage bills paid and the new account fees, monthly administrative billing fees, and final bill fees paid.

FOR A SIXTH CLAIM

Violations of South Carolina Residential Landlord and Tenant Act

102. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

103. The South Carolina Residential Landlord and Tenant Act provides that a landlord may not include in a rental agreement terms and conditions prohibited by law.

104. The allocation rate, new account fees, monthly administrative billing fees, and final bill fees provided in the leases for water and sewerage are prohibited by law as a public utility rate not approved by the Commission.

105. Complainants were damaged by the violations of the South Carolina Residential Landlord and Tenant Act in the amount of the unlawful allocation rate water and sewerage bills

paid and the new account fees, monthly administrative billing fees, and final bill fees paid.

FOR A SEVENTH CLAIM

Penalty for Unlawful Water and Sewerage Rates – S.C. Code § 58-5-370

106. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

107. Section 58-5-370 of the South Carolina Code provides that a person or corporation charging a rate for furnishing water to the public or a portion of the public that was not approved by the Commission shall be fined for each time a consumer was overcharged.

108. The allocation formula rate, new account fees, monthly administrative billing fees, and final bill fees charged by Defendants were not approved by the Commission and therefore are greater than any rate fixed by the Commission.

109. Each monthly bill to each tenant at the Audubon Property and the Veridian Property constitutes a separate overcharge of a consumer for water and sewerage.

110. Pursuant to Section 58-5-370 of the South Carolina Code, Defendants are to be fined, and one-half of such fine shall go to Defendants as the informers.

FOR AN EIGHTH CLAIM

Negligence

111. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

112. Defendants owe Complainants and the other current and former tenants at the Audubon Property and the Veridian Property statutory and common law duties.

113. Defendants owe Complainants and the other current and former tenants at the Audubon Property and the Veridian Property the duty to provide water and sewerage only at rates

approved by the Commission.

114. Defendants owe Complainants and the other current and former tenants at the Audubon Property and the Veridian Property the duty to provide water and sewerage at just and reasonable rates.

115. Defendants owe Complainants and the other current and former tenants at the Audubon Property and the Veridian Property the duty to conduct themselves in a reasonable manner as a prudent and reasonable public utility would conduct itself.

116. Defendants owe Complainants and the other current and former tenants at the Audubon Property and the Veridian Property the duty to follow and abide by all applicable statutes and regulations.

117. Defendants breached their statutory and common law duties to Complainants and the other current and former tenants by charging allocation rates, new account fees, monthly administrative billing fees, and final bill fees that were unlawful and that did not accurately and fairly allocate water and sewerage usage among tenants.

118. Defendants' breaches of their statutory and common law duties to Complainants and the other current and former tenants were conscious failures to exercise due care and reckless disregard of the rights of Complainants and the other current and former tenants at the properties.

119. Defendants breached their statutory and common law duties to Complainants and the other current and former tenants at the properties causing damages to Complainants and the other current and former tenants in the amount of the unlawful allocation rate water and sewerage bills paid and the new account fees, monthly administrative billing fees, and final bill fees paid.

120. Complainants are entitled to an award of actual and punitive damages.

FOR A NINTH CLAIM
Unjust Enrichment/Quantum Meruit

121. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

122. Defendants received payments of water and sewerage rates and fees from Complainants and the other current and former tenants to which Defendants were not legally entitled.

123. The water and sewerage rates and fees were not approved by the Commission and therefore cannot be charged to Complainants and other tenants.

124. Complainants and the other current and former tenants at the properties conferred a benefit on Defendants in the form of the payments for water and sewerage rates and fees.

125. Defendants retained the water and sewerage rates and fees payments made by Complainants and the other current and former tenants at the properties.

126. The retention of the water and sewerage rates and fees payments by Defendants is unjust because the water and sewerage rates and fees were illegal rates and fees.

FOR A TENTH CLAIM
South Carolina Unfair Trade Practices Act

127. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

128. Defendants engaged in unfair acts and practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*

129. The unfair acts and practices of Defendants include, but are not limited to:

- a. Entering into leases providing for illegal water and sewerage allocation

rates and fees;

b. Charging illegal water and sewerage allocation rates; and

c. Charging illegal water and sewerage fees.

130. Defendants' violations of the Unfair Trade Practices Act affect the public interest.

131. Defendants lease apartments to the general public.

132. Defendants' violations of the Unfair Trade Practices Act were repeated and will continue to be repeated.

133. Defendants engaged in a pattern of unfair acts and practices.

134. Defendants engaged in and continue to engage in substantially similar transactions with consumers.

135. Complainants suffered damages as a result of Defendants' unfair acts and practices including the water and sewerage usage fees calculated using the allocation rate, new account fees, monthly administrative billing fees, and final bill fees paid.

136. Defendants' unfair acts and practices proximately caused Complainants' damages.

137. Defendants knew, reasonably should have known, and could have ascertained through the exercise of reasonable efforts that the unfair acts and practices violated the Unfair Trade Practices Act.

138. Defendants' violations of the Unfair Trade Practices Act were knowing or willful.

139. Complainants seek relief under the South Carolina Unfair Trade Practices for themselves individually and not on behalf of a class.

140. Complainants are entitled to an award of treble damages.

141. Complainants are entitled to an award of attorneys' fees, expert fees, costs, and

expenses.

FOR AN ELEVENTH CLAIM
Declaratory Judgment

142. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.

143. Pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, Complainants are entitled to and request a declaratory judgment that:

- a. The allocation formula rate, new account fees, monthly administrative billing fees, and final bill fees charged by Defendants for water and sewerage was and is an unlawful rate not permitted by South Carolina law;
- b. Defendants are and were a public utility required to submit any rate and fees for water and sewerage to the Commission before charging such rate or fee;
- c. Defendants may not charge tenants for water or sewerage through an allocation formula rate or any other rate unless and until such rate is filed with and approved by the Commission; and
- d. Defendants may not charge tenants any new account fee, monthly administrative billing fee, final bill fee, or other fee for water or sewerage until such fee is filed with and approved by the Commission.

FOR A TWELFTH CLAIM
Injunctive Relief

144. Complainants reallege the allegations in the preceding paragraphs as if fully set forth herein.


145. Complainants and the other current and former tenants at the Audubon Property

administrative billing fees, and final bill fees, and

m) such other and further relief as the Commission deems just and proper.

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